

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

BECKLEY

ETHELBERT BROADNAX,

Plaintiff,

v.

Case No. 5:08-cv-01398

MICHAEL SHAUSTEN,  
OFFICER WEBB,  
MARK McCLUNG,  
BECKLEY VETERANS ADMINISTRATION  
MEDICAL CENTER,  
OFFICER McKINNEY,  
DANIEL ROMM, and  
UNITED STATES OF AMERICA,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

Pending before the Court is Plaintiff's Amended Complaint (docket # 13). By Order entered June 17, 2010, the undersigned directed Plaintiff to appear in person for a status conference to take place on Thursday, June 24, 2010, at 11:00 a.m., in Courtroom 5400, Robert C. Byrd United States Courthouse, 300 Virginia Street East, Charleston, WV. The Order was mailed to Plaintiff's home address, and was not returned by the United States Postal Service. Plaintiff did not appear at the status conference, nor did he call chambers at 304-347-3279. Counsel advised that on June 23, 2010, Plaintiff was convicted of certain charges in the Circuit Court of Raleigh County, West Virginia, but that he was not taken into

custody.

Assistant U.S. Attorney Steve Horn orally moved to dismiss this action without prejudice for failure to prosecute. In light of Plaintiff's failure to appear and to take any other action indicating an interest in prosecuting this action, the undersigned proposes that the presiding District Judge **FIND** that Plaintiff has failed to prosecute.

It is respectfully **RECOMMENDED** that Mr. Horn's oral motion be granted and that this action be dismissed without prejudice for failure to prosecute.

The parties are notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Irene C. Berger, United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen days (filing of objections), and then three days (service/mailing), from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall

constitute a waiver of de novo review by the district court and a waiver of appellate review by the circuit court of appeals. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 155 (1985); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Copies of such objections shall be served on opposing parties and Judge Berger.

The Clerk is directed to file this Proposed Findings and Recommendation, to mail a copy of the same to Plaintiff by regular mail and by certified mail, return receipt requested, and to transmit it to counsel of record.

June 24, 2010  
Date

Mary E. Stanley  
Mary E. Stanley  
United States Magistrate Judge